

# RECORD OF ORDINANCES

Ordinance No. 3708

Passed: September 14, 2021

**AN ORDINANCE PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,900,000 BY THE CITY OF WEST CARROLLTON, MONTGOMERY COUNTY, OHIO FOR THE PURPOSE OF REFUNDING A PORTION OF OUTSTANDING BOND ANTICIPATION NOTES, THE PROCEEDS OF WHICH NOTES WERE USED TO FINANCE VARIOUS ROADWAY ENHANCEMENTS ON CENTRAL AVENUE AND RELATED COSTS, AND DECLARING AN EMERGENCY.**

WHEREAS, Chapter 133 of the Ohio Revised Code provides authority for this Council of the City of West Carrollton (the "City") to issue its notes to finance the widening roadway 3 feet with new curbs on the South side of Central Avenue, reducing from four travel lanes to two, installing a new dedicated left turn lane throughout, installing new right turn lanes at the intersections of Miami and Elm Streets, constructing new mast arm traffic signals at the intersections of Miami and Elm Streets, removing existing decorative wall on south side of Central Avenue, adding on-street parking on the South side of Central Avenue, adding new streetlights on Central Avenue, new paving throughout, acquiring real estate within the corporate limits of the City and related costs (the "Project"), all as further described hereinafter; and

WHEREAS, the City has previously issued notes currently outstanding in the amount of \$1,750,000 (the "Notes") which are about to mature; and

WHEREAS, this Council has determined it will be economically advantageous to the City to permanently finance the Notes; and

WHEREAS, the Finance Director of the City has estimated the life or period of usefulness of the that the life of the hereinafter described improvements is at least five (5) years, and certified that the maximum maturity of the bonds is twenty one (21) years;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of West Carrollton, Montgomery County, Ohio:

SECTION 1. That it is hereby declared necessary to issue bonds (hereinafter called the "Bonds") of the City, in the principal amount of not to exceed \$1,900,000 bearing interest estimated at five per centum (5%) per annum and maturing over a period of fifteen (15) years, for the purposes of refunding the Notes and permanently financing the Project.

SECTION 2. That the Bonds shall be dated their date of issuance and shall be of the denomination or denominations as may be requested by the purchaser or purchasers thereof all as determined by the Finance Director or the City Manager without further action by this Council, except that the denomination shall be \$100,000 or any integral

# RECORD OF ORDINANCES

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multiple of \$1,000 in excess of \$100,000. The terms of such Bonds, which shall be in compliance with Chapter 133 of the Ohio Revised Code, shall be set forth in a certificate of award (the "Certificate of Award"), which is hereby authorized and which shall be executed by the City Manager or the Finance Director without further action by this Council. The Certificate of Award shall indicate the Original Purchaser for the Bonds, dated date for the Bonds, the dates on which interest on the Bonds is to be paid (the "Interest Payment Date"), the purchase price for the Bonds (which shall be not less than 97% of the face value thereof), the interest rate for the Bonds and such other terms not inconsistent with this Ordinance as the City Manager or the Finance Director shall deem appropriate. The Bonds shall be numbered from 1 (or R-1) upward and shall bear interest at the rate or rates set forth in the Certificate of Award setting forth the final terms of the Bonds, but the true interest cost on the Bonds shall not be in excess of five per centum (5.00%) per annum. Interest shall be payable semiannually on April 1 and October 1 of each year, beginning on such date as is set forth in the Certificate of Award, until the principal sum is paid. The Bonds shall be subject to optional, mandatory and mandatory sinking fund redemption in the amounts and at the times and prices set forth in the Certificate of Award and in the manner set forth in this Ordinance. Said Bonds shall mature or be subject to mandatory sinking fund redemption on October 1 of each year, commencing as set forth in the Certificate of Award and ending not later than October 1, 2036, as determined by the Finance Director and set forth in the Certificate of Award, within the limitations set forth in Chapter 133 of the Ohio Revised Code, without further action of this Council.

The Certificate of Award shall fix the maturity or maturities and the mandatory and optional redemption provisions of the Bonds. The Bonds of such maturities as are designated by the Finance Director and set forth in the Certificate of Award shall be callable for redemption at the option of the City at such prices as are designated by the Finance Director. If less than all Bonds which are payable by their terms on the same date are to be called, the particular Bonds or portions of Bonds payable on such same date and to be redeemed from such series shall be selected by lot by the Paying Agent and Registrar referred to in Section 3 below, in such manner as the Paying Agent and Registrar in its discretion may determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting Bonds for redemption, the Paying Agent and Registrar shall treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of such bond by \$5,000.00.

At least thirty (30) days before the redemption date of any Bonds the Paying Agent and Registrar shall cause a notice of such redemption either in whole or in part, signed by the Paying Agent and Registrar, to be mailed, postage prepaid, to all registered owners of Bonds to be redeemed in whole or in part at their addresses as they appear on the registration books kept by the Paying Agent and Registrar, but failure to mail any such



## RECORD OF ORDINANCES

Ordinance No. 3708

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notice shall not affect the validity of the proceedings for such redemption. Each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, if less than all of the Bonds being payable by their terms on a single date then outstanding shall be called for redemption, the distinctive numbers or letters, if any, of such bonds to be redeemed and, in the case of Bonds to be redeemed in part only, the portion of the principal amount thereof to be redeemed. In case any Bond is to be redeemed in part only, the notice of redemption which relates to such Bond shall state also that on or after the redemption date upon surrender of such Bonds, a new Bond in principal amount equal to the unredeemed portion of such Bonds will be issued.

On the date so designated for redemption, notice having been sent in the manner and under the conditions hereinabove provided and moneys for payment of the redemption price being held in separate accounts by the Paying Agent and Registrar for the holders of the Bonds or portions thereof to be redeemed, the Bonds or portions of Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds or portions of Bonds on such date, interest on the Bonds or portions of Bonds so called for redemption shall cease to accrue, and the holders or registered owners of such Bonds or portions of Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and to receive Bonds for any unredeemed portions of Bonds.

In case part but not all of an outstanding Bond shall be selected for redemption, the registered owner thereof or his attorney or legal representative shall present and surrender such Bond to the Paying Agent and Registrar for payment of the principal amount hereof so called for redemption, and the City shall execute and the Paying Agent and Registrar shall authenticate and deliver to or upon the order of such registered owner or his legal representative, without charge therefore, for the unredeemed portion of the principal amount of the Bond so surrendered a Bond of the same series and maturity and bearing interest at the same rate.

SECTION 3. That the Bonds shall be executed by the City Manager and the Finance Director and may but shall not be required to bear the seal of the corporation. The Bonds shall be designated "Various Purpose General Obligation Bonds, Series 2021B" and shall be payable at the office of the Finance Director of the City or such bank or trust company designated as is by the Finance Director or City Manager and the purchaser, and shall express upon their face the purpose for which they are issued and that they are issued in pursuance of this Ordinance.

The Bonds shall also bear the manual authenticating signature of an authorized signer of such bank or trust company as is selected by the Finance Director without further action by this Council to act as paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the Bonds; provided the Finance Director may select

# RECORD OF ORDINANCES

Ordinance No. 3708

Passed: September 14, 2021

itself to be the Paying Agent and Registrar with respect to the Bonds. The principal amount of each Bond shall be payable at the principal office of the Paying Agent and Registrar, and payment of interest thereon shall be made on each interest payment date to the person whose name appears on the record date (March 15 and September 15 for April 1 and October 1 interest, respectively) on the Bond registration records as the registered holder thereof, by check or draft mailed to such registered holder at his address as it appears on such registration records.

The Bonds shall be transferable by the registered holder thereof in person or by his attorney duly authorized in writing at the principal office of the Paying Agent and Registrar upon presentation and surrender thereof to the Paying Agent and Registrar. The City and the Paying Agent and Registrar shall not be required to transfer any Bond during the 15-day period preceding any interest payment date, and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent and Registrar. Upon such transfer, a new Bond or Bonds for the same principal amount will be issued to the transferee in exchange therefore.

The City and the Paying Agent and Registrar may deem and treat the registered owner of a Bond as the absolute owner thereof for all purposes, and neither the City nor the Paying Agent and Registrar shall be affected by any notice to the contrary.

SECTION 4. The final terms of the Bonds, which shall not be inconsistent with this Ordinance, shall be set forth in a Certificate of Award and/or Bond Purchase or Placement Agreement (the "Bond Purchase Agreement") each of which is hereby authorized to be entered into by and between the City and D.A. Davidson & Co., as placement or solicitation agent for the Bonds (the "Placement Agent") and the Finance Director/Clerk or the City Manager are each authorized without further action of this Council to execute such Certificate of Award and/or Bond Purchase Agreement. The execution of such Certificate of Award and/or Bond Purchase Agreement by such official shall evidence acceptance of the final terms of the Bonds and that such terms are consistent with this Ordinance.

SECTION 5. The funds derived from the sale of the Bonds authorized by this Ordinance become and they are hereby set aside and appropriated for the payment as described in this Ordinance.

SECTION 6. The proceeds of the sale of the Bonds, less any underwriting discount of the Placement Agent, plus other lawfully available funds of the City as set forth in the Bond Purchase Agreement, and except for accrued interest, shall be used as follows: the amount as set forth in the Certificate of Award to be used to pay all costs and items of expense incurred by the City in connection with the issuance of the Bonds, including without limitation costs of bond counsel and other legal, accounting and



## RECORD OF ORDINANCES

Ordinance No. 3708

Passed: September 14, 2021

management services and services of other consultants and professional, a Placement Agent fee if the Bonds are not sold in an underwriting, and related charges, fees and disbursements; bond rating fees; costs of issuance; printing and reproduction costs; filing and recording fees; initial fees and charges of the Paying Agent and Registrar; and costs of preparation, execution, transportation and safekeeping of the Bonds (collectively, the "Costs of Issuance"). The City shall transfer to the Bond Retirement Account any moneys remaining in the Costs of Issuance allocation upon determination by the Finance Director/Clerk that all the costs described above have been received and paid by the City; and

SECTION 7. Any accrued interest on the Bonds shall be transferred to the Bond Retirement Account and shall be applied only to the payment of the interest and principal of the Bonds and for no other purpose.

SECTION 9. That the Bonds shall be the full general obligations of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same.

SECTION 10. That during the period while the Bonds run there shall be levied upon all of the taxable property in the City, within applicable limitations, in addition to all other taxes, a direct tax annually, not less than that which would have been levied if Bonds had been issued without the prior issue of the Notes; said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from said tax levy hereby required shall be placed in a separate and distinct fund and, together with interest collected on the same, shall be irrevocably pledged for the payment of the principal and interest of the Bonds, when and as the same fall due; provided, however, to the extent other City revenues are available for such purpose said tax shall not be levied therefor.

SECTION 11. That this Council, for and on behalf of the City, hereby covenants that it will restrict the use of the Bonds hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder. The Treasurer or any other officer having responsibility with respect to the issuance of said Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of said Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and

# RECORD OF ORDINANCES

Ordinance No. 3708

Passed: September 14, 2021

circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder. These Bonds are hereby designated "tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code. The City does not anticipate issuing more than \$10,000,000 of "qualified tax-exempt obligations" during the current calendar year.

SECTION 12. That if required by the City's municipal advisor this Council hereby authorizes and directs the Finance Director or the City Manager to take any and all actions which may be necessary to issue the Bonds in book-entry-only form or in such form as will render the Bonds eligible for the services of the Depository Trust Company, New York, New York without further action by this Council, including execution of all documents necessary therefore.

SECTION 13. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such agreements, financing statements, closing certificates and other instruments or documents as are, in the opinion of bond counsel, necessary to carry out the purposes of this ordinance.

SECTION 14. That if determined to be necessary by bond counsel, this Council hereby covenants and agrees that the City will execute, comply with and carry out all of the provisions of a continuing disclosure certificate dated the date of issuance and delivery of the Bonds (the "Continuing Disclosure Certificate") in connection with the issuance of the Bonds. Failure to comply with any such provisions of the Continuing Disclosure Certificate shall not constitute a default on the Bonds; however, any holder of the Bonds may take such action as may be necessary and appropriate, including seeking specific performance, to cause the City to comply with its obligations under this section and any Continuing Disclosure Certificate.

SECTION 15. That the firm of Thompson Hine LLP, is hereby engaged as the City's "bond counsel" and that the City Manager is hereby authorized and directed to execute and deliver the engagement letter, if needed, in the form on file with the City.

SECTION 16. The City Manager or the Finance Director is hereby authorized to apply, if he or she deems it appropriate, for a rating on the Bonds from either Standard & Poor's Corporation or Moody's Investors Service, and to pay the fee or premium for said rating to the extent authorized by law and approved by bond counsel.

SECTION 17. That the Finance Director is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

SECTION 18. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an



## RECORD OF ORDINANCES

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open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 19. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City for the reason that the immediate issuance of said Bonds is required for the timely financing of the projects to which this financing relates including obtaining a favorable interest rate, and it shall take effect immediately upon its adoption.

Passed: September 14, 2021

Attest: Tom Reelf  
Clerk of Council

Jeffrey S. Simon  
Mayor

Effective Date: September 14, 2021

## RECORD OF ORDINANCES

Ordinance No. 3708

Passed: September 14, 2021

### **CERTIFICATE**

I, undersigned Finance Director/Clerk of the City of West Carrollton, Ohio hereby certify that the above Ordinance is a true and correct copy as passed by the Council of the City of West Carrollton, this \_\_\_\_ day of \_\_\_\_\_, 2021 and that at least a majority of the elected members voted in the affirmative on said motion.

\_\_\_\_\_  
Finance Director/Clerk

### **CERTIFICATE**

The undersigned hereby certifies that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_.

\_\_\_\_\_  
Finance Director/Clerk

### **CERTIFICATE**

The undersigned hereby certifies that a copy of the foregoing ordinance was certified this day to the Montgomery County Auditor.

\_\_\_\_\_  
Finance Director/Clerk

### **RECEIPT**

The undersigned hereby acknowledges receipt of a certified copy of the foregoing ordinance.

\_\_\_\_\_  
Montgomery County Auditor

Dated: \_\_\_\_\_, 2021



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## EXTRACT FROM MINUTES OF MEETING

The Council of the City of West Carrollton, County of Montgomery, Ohio, met in \_\_\_\_\_ session, at \_\_\_\_\_ .m., on the \_\_\_\_\_ day of \_\_\_\_\_, 2021. at \_\_\_\_\_, with the following members present:

There was presented and read to Council Ordinance No. \_\_\_\_\_, entitled:

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,900,000 BY THE CITY OF WEST CARROLLTON, MONTGOMERY COUNTY, OHIO FOR THE PURPOSE OF REFUNDING A PORTION OF OUTSTANDING BOND ANTICIPATION NOTES, THE PROCEEDS OF WHICH NOTES WERE USED TO FINANCE VARIOUS ROADWAY ENHANCEMENTS ON CENTRAL AVENUE, AND DECLARING AN EMERGENCY.

M \_\_\_\_\_ moved to suspend the rule requiring each ordinance or resolution to be read on three different days. M \_\_\_\_\_ seconded the motion and, the roll being called upon the question, the vote resulted as follows:

M \_\_\_\_\_ then moved that Ordinance

No. \_\_\_\_\_ be adopted. M \_\_\_\_\_ seconded the motion and, the roll being called upon the question, the vote resulted as follows:

The ordinance was declared adopted \_\_\_\_\_, 2021.

## CERTIFICATE

The undersigned, Clerk of Council of said municipality, hereby certifies that the foregoing is a true and correct extract from the minutes of a meeting of the council of said municipality, held on the \_\_\_\_\_ day of September, 2021, to the extent pertinent to consideration and adoption of the above-entitled obligation.

\_\_\_\_\_  
Finance Director/Clerk